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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

NELSON, CHRIS A

ART UNIT

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2193

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/540,117	Applicant(s) LESENNE ET AL.	
	Examiner CHRIS NELSON	Art Unit 2193	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 October 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 10/27/2009 have been fully considered but they are not persuasive.
2. Applicant argues that claim 1 recites a service which is executable on a terminal and relates to live events, televised games, or interactive promotions. An example service comprises HTML pages and page dependencies. Because Barmettler is directed towards a media renderer, applicants argue that it is significantly different from the claimed invention. However, the media in barmettler is rendered by an installable plug-in in response to a "network page" (see abstract, figure 2, column 3, lines 42-45, and column 5, lines 1-8). In so much as an HTML page or elements thereof may be an executable service, the network page of barmettler with it's renderable elements are also executable. The examiner is interpreting the executable service to be the page element which needs a separate module, program, or plug-in to be viewed, such as the applicant's flash file or Barmettler's media. In addition, since the application provides a rendering service to a user by rendering the web page it also could be considered the service.
3. With respect to claim 1, applicant further argues that Barmettler executes an application, not a service because Barmettler's applications are merely media renderers. However, as shown above, rendering media is equivalent to executing a service.

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4. With respect to claim 1, Barmettler fails to disclose an automatic selective decision module controlling acquisition of computer programs by one of allowing and preventing the downloading of said computer programs according to said information associated with said services. Applicant argues that the combination of Barmettler & Chanut still fails to provide this feature because it involves further computation of the information instead of being directly based upon the information. However, the examiner maintains that the comparison of remaining battery life and download time of the media file is still based upon information associated with the service (i.e. file length), and therefore done "according to" said information by the selective decision module (the media actuator of Barmettler).

5. With respect to claim 2, applicant argues that Barmettler does not disclose receiving information associated with the service prior to execution of the service. However, the examiner maintains that the local availability the installation plug-in (column 5, lines 22-26) is received by the media actuator prior to execution of the plug-in. The local availability of the installation plug-in is determined using an application identifier (Column 5, line 22-26, 38-41, 54-67, and column 6, lines 1-7). The application identifier, along with additional information such as the URI of the media file is later passed on to the installation plug-in (Column 8, lines 42-48 and column 9, lines 3-9). This is done prior to executing or installing the installation plug-in that renders the media (executes the service) so that the correct installation plug-in is used to render the media.

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6. With respect to claim 2, applicant further argues that temporal information relating to the validity of execution of said services is not disclosed by the combination of Barmettler & Chanut. Applicant specifically states that the temporal information is derived within the user device by a calculation and does not originate from the service. However, the claims do not recite a where the information is received from.

Furthermore, the calculation of how long it would take to download the application is based upon the file length, which is associated with the service. The file length may be part of the file header, and may be received prior to downloading the entire media file (Chanut 0023). The file length, along with any other additional information in the file header may be used in conjunction with the application identifier of Barmettler by the media actuator to determine if the media should be rendered, and how to go about doing so.

7. With respect to claims 7, Barmettler & Chanut fail to disclose wherein the information associated with the services includes at least one forced downloading indicator. Applicant argues that Gosling fails to disclose a forced downloading indicator because a user may be asked whether or not to accept the download. However, Gosling specifically states that automatic downloading of the object viewers (comparable to Barmettler's media renderers - see arguments with response to claim 1) may be done by using a default decision to accept the object viewers, thereby not allowing any user interaction (Column 8, lines 42-43).

Claim Rejections - 35 USC § 101

8. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

9. **Claim 15** is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter as follows. Claim 15 defines a control information message. However, while the preamble implies a "system", which would typically be indicative of a "machine", the body of the claim lacks definite structure indicative of a physical apparatus. Therefore, the claim as a whole appears to be directed to software per se.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims **1-6, 8-10, 11, 14, 16** are rejected under 35 U.S.C. 103(a) as being unpatentable over Barmettler et al (US 7203940 B2, hereinafter, Barmettler) in view of Chanut (US 2004/0002367 A1).

12. As per **Claim 1**, Barmettler discloses a conditional execution device for the execution of services received via a communication network, comprising:

- a. A module for receiving information associated with said services, provided to receive said information prior to the execution of associated services (Column 5, line 60 to Column 6, line 7). The media actuator determines that the installation plug-in is or is not installed (Column 5, lines 22-53) using an application identifier. The application identifier, along with the media file's URI are passed along to either the plug-in executor or the plug-in installer (Column 8, line 42-48 and column 9, lines 3-9). The media is later rendered using the plug-in, but cannot be done until the correct plug-in is located either locally or remotely (See figure 5 for overview, and column 5, lines 22-53).
- b. A module for checking the local availability of said identified computer programs (Figure 5, #273, #276, and Column 9, lines 22-41). The installation plug-in proceeds to either box 279 or 283, depending on whether the required version of the application is installed. The media makes the determination using at least the application identifier.
- c. A selective decision module for the execution of services, provided to allow the execution of said services if said computer programs required for said services are available locally (Figure 5, #273, #276, and Column 9, lines 22-41). If the media actuator determines that the installation plug-in is already installed on the client, it downloads a plug-in executor which executes the installation plug-in. A computer program required for the execution of the services corresponds to rendering the media with the installation plug-in.

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d. A module for acquiring computer programs, capable of triggering a download of said computer programs required for said services if said computer programs are not available locally (Figure 5, #283, #286, and Column 9, lines 25-67). If the media actuator determines that the installation plug-in is not installed in the client, it downloads a plug-in installer, which then downloads the installation plug-in.

Barmettler fails to disclose an automatic selective decision module for acquiring computer programs, capable of allowing or preventing the downloading of said computer programs required for said services and not available locally, at least according to said information associated with said services. However, the examiner maintains that it was well known in the art at the time of the invention to provide this limitation, as taught by Chanut.

In a similar field of endeavor, Chanut discloses a method of determining whether to download a file or not, based at least indirectly on the file length, in comparison to a known resource. (See figure 3, 0022, 0025-0026, 0028, and 0049). The resource can be, for example, battery power, which corresponds to the amount of time before the device stops functioning (0004).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include a decision module that decides whether or not to download the application based a comparison of the time it would take to download the application, and the time remaining before the device ceases to function. The amount of time necessary to download the application would be determined by the length of the

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file, which would be determined by examining the application identifier which could be changed to include such additional information. The purpose for doing so would be to ensure that the application will be able to download successfully.

13. As per **claim 2**, Chanut discloses a conditional execution device as applied to claim 1. Chanut further discloses wherein the information associated with said services includes temporal information relating to the validity of execution of said services (See figure 3, 0025-0026, 0028, and 0049). Temporal information corresponds to the time it would take to download the application, which would be derived using the application identifier. Chanut discloses wherein the selective acquisition decision module is capable of allowing and preventing said downloading at least according to said temporal information (See figure 3, 0022, 0025-0026, 0028, and 0049). The motivation for this combination would be the same as applied to claim 1.

14. As per **claims 3-5**, Chanut discloses a conditional execution device as applied to claim 2. Chanut further discloses wherein the selective acquisition decision module is designed to allow said downloading if said downloading is expected to be completed before predefined instants of said services, extractable from temporal information, and to prevent said downloading otherwise (See figure 3, 0022, 0025-0026, 0028, and 0049). Chanut also discloses wherein the predefined instances are the start and end of validity of execution of the services.

The moment when the download completes is the same moment that execution of the media becomes valid. Therefore, Chanut inherently meets the added limitation of claim 4.

The moment when the device ceases to function due to a low battery is the moment when execution is no longer valid. It would have been obvious to one of ordinary skill in the art to modify the device to prevent downloading if the user will not be able to actually view the media after downloading the application. Doing so prevents needless downloading of content (0004).

15. As per **claim 6**, chanut discloses a selective acquisition decision module, as applied to claim 3. Chanut discloses wherein the module is capable of acquiring downloading times of said computer programs required and not available locally, and thus estimating when said downloading is expected to be completed (See figure 3, 0022, 0025-0026, 0028, and 0049). The motivation for this combination would be the same as applied to claim 3.

16. As per **claim 8**, Chanut discloses a conditional execution device as applied to claim 1. Chanut also discloses a module for acquiring sizes of said computer programs required and not available locally, and the selective acquisition decision module is capable of allowing and preventing said download also according to said sizes. (See figure 3, 0022, 0025-0026, 0028, and 0049). If the download is too large for the device to remain in operation while downloading, the download will not happen. The motivation for this combination would be the same as applied to claim 1.

17. As per **claim 9**, Chanut discloses the conditional execution device as applied to claim 8. Chanut further discloses wherein the selective acquisition decision module is designed to estimate downloading times of said computer programs required and not available locally according to said sizes and local reception capabilities for said

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computer programs, and to allow said downloading when said downloading allows at least partial execution of said services. (See figure 3, 0022, 0025-0026, 0028, 0036-0037 and 0049). The amount of resources needed to download a file, which may be battery power or time, are calculated depending on the file length, and the data transfer rate of the device. If the amount of resources exceed the amount of resources needed, the file is downloaded and at least partially executed. The motivation for this combination would be the same as applied to claim 1.

18. As per **claim 10**, Barmettler & Chanut disclose a conditional execution device as applied to claim 1. Barmettler further discloses wherein said services include messages of announcement of services and contents (Column 5, line 60 to Column 6, line 7, the application identifier), the reception module is designed to receive said information associated with said services in said announcement messages of services and the information identification module is designed to extract said information from said service announcement messages. An application identifier is provided to the installation plug-in.

19. **Claim 11**, recites substantially similar limitations to claim 1, and is therefore rejected using the same art and rationale set forth above.

20. **Claim 14**, recites substantially similar limitations to claim 11, and is therefore rejected using the same art and rationale set forth above.

21. As per **Claim 16**, Barmettler & Chanut disclose the conditional execution decision device of claim 1. Barmettler further discloses wherein said conditional execution decision device forms part of a decoder (Column 5, lines 1-8, and abstract).

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The browser as a whole facilitates the download and play of media files, otherwise known as decoding them, through the use of plug-ins. Both the plug-ins and the media actuator reside on the client system once the user downloads the network page and the plug-in (See figure 1), respectively. In such an arrangement, either the client computer, or the browser could be considered the decoder, while the logic of the media actuator is the conditional execution device.

22. Claims **7, 12-13, and 15** are rejected under 35 U.S.C. 103(a) as being unpatentable over Barmettler in view of Chanut, in further view of Gosling et al (Patent 6052732).

23. As per **claim 7**, Barmettler & Chanut disclose a conditional execution device as applied to claim 1. Barmettler & Chanut fail to disclose wherein said information associated with said services includes at least one forced downloading indicator having an activated value and a deactivated value or wherein said selective acquisition decision module is designed to forcibly allow said downloading if said forced downloading indicator has an activated value. However, the examiner maintains that it was well known in the art at the time of the invention to provide forced downloading as taught by Gosling.

In a similar field of endeavor, Gosling discloses the automatic downloading of object viewers. Gosling discloses a configuration file that can be used to bypass user interaction and accept the object viewer (Column 8, lines 42-53).

Therefore, it would have been obvious to one of ordinary skill in the art to include a portion of the configuration file relating to forcibly downloading the application within the application identifier, and to use it in deciding whether or not to download the application as taught by Gosling. The purpose for doing so would be to ensure that the user has the correct application to render the media, without leaving the user a choice.

24. As per **claim 12**, Barmettler & Chanut disclose a device for compiling information messages associated with services, said messages being intended for transmission to users before execution of said associated services, said device including means of incorporating in said messages information concerning computer programs required for the execution of said services, as applied to claim 1 above. Barmettler also discloses wherein said message compilation device is designed to produce messages intended for a conditional execution device (Figure 3, #253, Figure 5, #273-276). Barmettler would inherently include some form of communication necessary to determine which plug-in or application is necessary. This communication would either be included within the application identifier, a file header, or in a separate identifier with similar function. Any of these three locations would be an obvious variant of one another. Barmettler & Chanut fail to disclose wherein the incorporation means are designed to include in said information at least one forced downloading indicator having an activated value and a deactivated value, said indicator designed to forcibly allow the downloading of said computer programs required if said indicator has an activated value. However, the examiner maintains that it was well known in the art at the time of the invention to provide forced downloading as taught by Gosling.

In a similar field of endeavor, Gosling discloses the automatic downloading of object viewers. Gosling discloses a configuration file that can be used to bypass user interaction and accept the object viewer (Column 8, lines 42-53).

Therefore, it would have been obvious to one of ordinary skill in the art to include a portion of the configuration file relating to forcibly downloading the application within the application identifier, and to use it in deciding whether or not to download the application as taught by Gosling. The purpose for doing so would be to ensure that the user has the correct application to render the media, without leaving the user a choice.

25. **Claim 13**, recites substantially similar limitations to claims 1 and 12, and is therefore rejected using the same art and rationale set forth above.

26. **Claim 15**, recites substantially similar limitations to claim 12, and is therefore rejected using the same art and rationale set forth above.

Conclusion

27. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

a. US 2003/0066076 A1 is cited in reference to executable content with expiration based on received information such purchase credit amount.

b. US 2003/0145316 A1 is cited for downloading a plug-in application from a website if the client computer is determined to be suitable for receiving it.

c. Patent 5,654,746 is cited for the downloading and execution of an executable service based on the temporal validity of the service.

- d. Patent 6,057,872 is cited for the downloading and execution of an executable service based on the credit or coupon information of the customer and the credit or coupon cost of the service.
- e. US 2003/0028652 A1 is cited in reference to downloading digital data based on a comparison of an internal clock to expiration information in the data.

28. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRIS NELSON whose telephone number is (571)270-7256. The examiner can normally be reached on Monday to Thursday, 9AM to 5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lewis Bullock can be reached on (571)272-3759. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/CHRIS NELSON/
Examiner, Art Unit 2193

/Lewis A. Bullock, Jr./
Supervisory Patent Examiner, Art Unit 2193